

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





75-1064

75-1064

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UNITED STATES COURT OF APPEALS  
For the Second Circuit

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UNITED STATES OF AMERICA,

Appellee,

-against-

NORMAN BURTON,

Appellant.

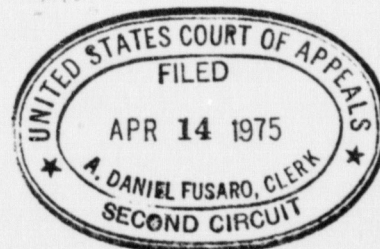
On Appeal From The United States District  
Court For The Southern District of  
New York

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APPELLANT'S APPENDIX

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USA-33s-521 - IND/INF - DISTRIB. POSSES NARC. DRUG  
Rev. 5-27-72

HCB,Jr:emw

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

- v - :

NORMAN BURTON, a/k/a :

"Big Time" and :

JOHN DOE "RON," :

Defendant(s) . :

- - - - - x

**Count One**

**The Grand Jury charges:**

On or about the **29th** day of **May, 1974,**

in the Southern District of New York

**NORMAN BURTON, a/k/a "Big Time"**

and

**JOHN DOE "RON"**

the defendant(s), unlawfully intentionally and knowingly did  
distribute and possess with intent to distribute a

Schedule **II** narcotic drug controlled substance, to wit,

**approximately 110.5 grams of cocaine hydrochloride.**

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A); and Title 18, United  
States Code, Section 2)



USA-33s- 522 - IND/INF - Distrib. Possess Narc. Drug (Succeeding Count)  
Rev. 5-21-72

NCB, Jr. :ew

COUNT TWO

**The Grand Jury further charges:**

On or about the 15th day of July, 1974  
in the Southern District of New York,  
**NORMAN BURTON, a/k/a "Big Time"**  
and  
**JOHN DOE "RON"**  
the defendant<sup>s</sup>, unlawfully, wilfully and knowingly did  
distribute and possess with intent to distribute a  
Schedule II narcotic drug controlled substance, to wit,  
**approximately 106.97 grams of cocaine hydrochloride.**

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

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FORTRAN

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PAUL J. CURRAN  
United States Attorney

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**United States District Court**

SOUTHERN DISTRICT OF NEW YORK

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THE UNITED STATES OF AMERICA

vs.

NORMAN BURTON, a/k/a  
"Big Time," and  
JOHN DOE "RON,"

Defendants.

---

**INDICTMENT**

74 Cr.

(21 USC §§ 812, 841(a)(1) and  
841(b)(1)(A); 18 USC § 2.)

PAUL J. CURRAN

*United States Attorney.*

A TRUE BILL

---

*Foreman.*



JUDGE TYLER

74 CIVIL 737

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S. 75

VS.

Harry C. Batchelder, AUSA

264-6293

NORMAN BURTON, a/k/a "Big Time"

JOHN DOE, a/k/a Ron

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

07)

Filing,

Clerk,

Marshal,

Attorney,

XXXXXX 21

XXXXXX 812,841(a)(1),(b).

Distr. & possess. w/intent to distr.

Cocaine, II. (Two Counts)

(Two Counts)

DATE

PROCEEDINGS

26-74 Filed indictment.

5-74 Norman Burton: Deft. present, (Atty. Present.) Deft. enters a plea of Not Guilty. 30 days for motions. Bail previously fixed by Magistrate at \$5,000 Personal Recognizance Bond, secured by \$2,500 cash.

5-74 John Doe, "Ron": Deft. not present, (No Atty.) Court enters a plea of Not Guilty.

Case assigned to Judge Tyler for all purposes. Stewart J.

1-74 Filed Govt's notice of readiness for trial.

4

Judge-Tyler

USA -vs- Norman Burton, et ano,

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
9/13/74	Pre-trial conference held. Deft.s' counsel fails to appear. AUSA agrees to turn over file to defts.' counsel. Trial date fixed for 11/25/74. Tyler, J.		
12/17/74	Filed Govt.'s request to charge.		
12/16/74	AUSA Daniel Beller present. Deft. and deft. atty. Edward Robb present. Trial started. WITH A JURY.		
12/17/74	Trial cont'd.		
12/18/74	Trial cont'd. and concluded. Deft. Norman Burton guilty on count 1. Pre-sentence investigation ordered. Dated for sent. 1/31/75 at 2:15 PM. New bail condition set by court at \$30,000. cash or security bond to be posted by 4PM. 12/20/74. Tyler, J.		
12/30/74	Norman Burton- filed Personal Recognizance Bond in the sum of \$50,000.		
12/27/74	Norman Burton- filed remand dated 12/20/74. Deft. not in custody.		
12/30/74	Filed ORDER that the bail conditions for deft. Norman Burton shall be P.R.E. in the sum of \$50,000., cash security in the sum of \$25,000. and for property located at 748 St. Marks Ave. Bklyn, N.Y. Tyler, J.		
02-14-75	NORMAN BURTON- filed JUDGMENT (atty. present) deft. is committed to custody of the Atty. Gen'l. for imprisonment for a period of TEN (3) YEARS and SIX (6) MONTHS. Pursuant to T. 21, Sec. 841, U.S. Code, the deft. is placed on Special Parole for a period of FOUR YEARS to commence upon expiration of prison sentence. Tyler, J. Issued all copies.		
02-18-75	Norman Burton- filed notice of appeal from judgment of 2/14/75 mailed copies.		
02-19-75	Filed transcript of record of proceedings. 16, 17, 18, 1975. 5		

RAYMOND F. BURCHARD, Clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

-against-

NORMAN BURTON

CASE NO. 74 CR 737

JUDGE H. R. TYLER

CLERK'S CERTIFICATE

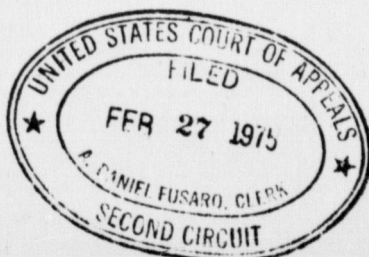
-----X  
I, RAYMOND F. BURGHARDT, Clerk of the District Court  
of the United States for the Southern District of New York, do  
hereby certify that the certified copy of docket entries lettered  
A-B, and the original filed papers number 1 thru 10, inclusive,  
constitute the record on appeal in the above entitled proceeding,  
except for the following missing documents:

DATE FILED

PROCEEDINGS

NONE

IN TESTIMONY WHEREOF, I have caused the seal of the  
said Court to be hereunto affixed, at the City of New York, in  
the Southern District of New York, this 27th day of February, in  
the year of our Lord, One thousand nine hundred and seventy five,  
and of the Independence of the United States the 199 year.



*Raymond F. Burghardt*  
Clerk of the Court

1 mdrf 2

2 didn't --

3 THE COURT: I don't want to argue with you.

4 MR. BOBICK: I want to preserve the record.

5 I don't want to argue with you.

6 THE COURT: The record will show what he said, as  
7 you pointed out. You don't have to repeat it again.

8 The motion is denied, and rest assured I will  
9 charge as I always do the defendant has no burden of  
10 proof whatsoever on any subject, and that would cure any  
11 alleged defect you feel was present, but I think that was  
12 cured by my snappy ruling.

13 (In open court, jury present.)

14 CHARGE OF THE COURT

15 (12:50 p.m.)

16 THE COURT: Miss Gould and ladies and gentlemen:

17 As you approach your deliberations in this case  
18 please remember that it is your duty to weigh the evidence  
19 calmly and dispassionately, without sympathy or  
20 prejudice for or against either the Government or the  
21 defendant, Mr. Burton.

22 As I think you all understand our system of juris-  
23 prudence defines the duties of the Judge on the one  
24 hand and the duties of the jury on the other. It is of  
25 course exclusively the function of the Judge to set forth

7



1 mdrf 3

2 the rules which govern the case with instructions as to the  
3 application of these rules.

4 On these legal matters you should take the law  
5 as I give it to you in the next few minutes, and you  
6 should not concern yourselves with statements as to the  
7 law which counsel may have made at any point during the  
8 trial.

9 For what I am sure are perfectly obvious reasons  
10 you are not to single out any one of my instructions  
11 as alone stating the law, but rather you should consider  
12 my instructions as a whole when you deliberate in the jury  
13 room.

14 I want to make it very plain to you that my  
15 actions during this trial in passing upon motions made by  
16 one or another of the lawyers, or in overruling or sustaining  
17 objections made by counsel, are of course not to be taken by  
18 you as any indication of the guilt or innocence of the  
19 defendant.

20 I think you all realize that counsel not only  
21 have the right but, indeed, they have the duty, to  
22 object to the introduction into evidence of any testimony  
23 or exhibits which they believe should not be admitted  
24 under the rules which govern these proceedings.

25 These are questions of law and procedure with

mdrf 4

which you need not have any concern during your deliberations.

Similarly, I ask that you draw no inferences from the fact that upon occasion I did ask questions of certain witnesses. For better or worse, those were intended only for clarification or perhaps to expedite matters and certainly were not intended to suggest any opinions on my part as to the guilt or innocence of the defendant or whether one witness who appeared here was more credible than another witness.

I want to emphasize to you that under our system it is your recollection and your understanding of the evidence, and only your recollection and your understanding of the evidence in the case, that can serve as the basis for your deliberations and verdict.

This proposition flows from the basic principle which you should keep in mind at all times, and that is that you are the sole and exclusive finders and judges of the facts in the case.

Moreover, as I will explain later in a moment or two, you are the sole determiners of the credibility of witnesses who appeared here during our relatively brief trial.

The law presumes a defendant, such as Mr. Norman



1 mdrf 5

2 Burton, to be innocent of accusations of crime. You will  
3 remember at the outset I pointed out that the indictment  
4 here containing two separate charges against Mr. Burton  
5 is merely an accusation or a pleading, it is not any  
6 evidence of guilty on the part of Mr. Burton.

7 It does not detract one wit from the presumption  
8 of innocence which rides in favor of Mr. Burton. As you  
9 know, prior to trial Mr. Burton pled not guilty to each of  
10 these two counts. Thus, the prosecution, as Mr.  
11 Beller well knows, has the burden of proving the charges  
12 against Mr. Burton beyond a reasonable doubt.

13 This is a burden that never shifts, and it  
14 remains upon the prosecution throughout the entire trial.  
15 Under our system a defendant such as Mr. Burton does not  
16 have to prove his innocence. On the contrary, as I have  
17 just stated, he is presumed innocent of the charges here  
18 on trial. This presumptions of innocence has been in  
19 his favor all along and it is in his favor as I speak now,  
20 and it remains in his favor during the course of your  
21 discussions in the jury room.

22 It is removed only if and when you are satisfied  
23 that the prosecution has sustained its burden of proving  
24 the guilt of Mr. Burton beyond a reasonable doubt.

25 The question naturally comes up at this point,  
what does the law mean by this concept or rule of reasonable

mdrf 6

doubt? In a sense, you could say the words come close to defining themselves. A reasonable doubt is a doubt founded in reason, and arising out of the evidence in the case or perhaps from lack of evidence.

It is a doubt which a reasonable person has after considering and weighing carefully all of the evidence. It means a doubt that is substantial and not just shadowy or ephemeral.

A reasonable doubt is one which appeals to your reason, your judgment, your common sense, and your own experiences in life. It is not caprice, whim or speculation, it is not an excuse to avoid the performance of a difficult or unpleasant duty, it is not sympathy for the defendant.

Rather, ladies and gentlemen of the jury, the law succinctly defines reasonable doubt to be a doubt which would cause prudent persons to hesitate before acting in matters of importance to themselves.

Now, finally on this subject, I point out that of course a reasonable doubt does not mean beyond all possible doubt. If the latter were the applicable standard,

few, if any men and women would ever be convicted of any charges of crime. As you well know, it is practically impossible for a human being to be absolutely convinced of any controverted fact which by its nature is not susceptible

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mdrf 7

of mathematical computation.

During this trial it has been, I think, fairly pointed out, at least by implication by the lawyers and the Judge, that you should make a determination or render your verdict here on the basis only of evidence which came out during our trial, and not on the basis of anything you may have heard or seen outside this courtroom.

Generally speaking, the law recognizes two kinds of evidence. The first kind is what is called direct evidence. Examples of direct evidence are the testimony of the witnesses who appeared here in this chair to my immediate left, were sworn and were examined on direct and cross examination.

Another form of direct evidence would be documents or physical objects which were actually received in evidence, not just marked but actually received in evidence, in your presence during the trial.

Another form of direct evidence would be stipulations of fact entered into by the attorneys on behalf of their clients. My own recollection is there were no such stipulations in this case.

Another form of evidence -- and you have heard about this kind of evidence, I am sure -- is circumstantial evidence. Circumstantial evidence very often can be

12

very important in cases tried in courtrooms, whether they be civil or criminal. A good example of circumstantial evidence is as follows:

I might say parenthetically that there have been many examples given in courtrooms like this country and you may have heard of this one, it is very simple.

Just assume that you were alone for many weeks on a desert island in the South Pacific, or at least you thought you were alone, and one morning after being weeks on this small island you were to arise from your bed and walk down to the edge of the ocean and there you would see a footprint, a print a great deal larger and different shape than yours.

Now, of course that morning you wouldn't have seen with your own eyes another human being on that small island.

Nevertheless, that footprint, fresh in the sand, might be regarded as circumstantial evidence for the proposition that contrary to what you had known up to then there was another person on that small island.

You can think of many examples of circumstantial evidence. This is another way of saying that you can draw such inferences as you think are justified from facts which you find to have been proved in the case by direct evidence.



1 mdrf 9

2 This is another way of saying that you can draw inferences  
3 as you do normally in your own business and important  
4 private affairs in life.

5 You are not to put aside your common sense, your  
6 good judgment, and your experience, in your endeavors in  
7 weighing and sifting the evidence in this case, whether it  
8 be called direct evidence or circumstantial evidence or  
9 both.

10 Keep in mind, also, that when you are considering  
11 evidence, whether it be direct evidence or circumstantial  
12 evidence, you must bear in mind the presumption of innocence  
13 and the rule of reasonable doubt that I have just talked to  
14 you about, and any other rules which I will discuss with  
15 you in the next few moments.

16 In every crime there must exist what I will call  
17 a union or joint operation of act and intent, or, as the  
18 latter is sometimes called, guilty knowledge. The burden  
19 is always upon the prosecution to prove both act and intent  
20 beyond a reasonable doubt.

21 A person who knowingly does what the law  
22 forbids, or knowingly fails to do an act which the law  
23 requires to be done, intending with bad purpose to either  
24 disobey or disregard the law, may be found to act with  
25 intent or guilty knowledge.

14

1 mdrf 10

2 Intent or guilty knowledge may be proved by circum-  
3 stantial evidence. Indeed, it rarely if ever can be  
4 established by other means. While witnesses may see and  
5 hear and thus be able to give us direct evidence of what  
6 a defendant does or fails to do, there of course can be  
7 no eye witness account of the state of mind with which the  
8 defendant acted or spoke or failed to act.

9 What a defendant does or fails to do may indicate  
10 intent or lack of intent to commit the offenses charged.  
11 The proof of the circumstances surrounding the transactions  
12 and events in evidence can supply an adequate basis for  
13 finding that the defendant acted wilfully and knowingly.

14 You are all familiar with the old adage that  
15 the actions of a man or a woman must be set in their time  
16 and place. You are also familiar with the old saying that  
17 just as the meaning of a word is understood only in its  
18 relation to other words in a sentence so the meaning of a  
19 particular act or failure to act may depend upon the  
20 circumstances surrounding it.

21 Therefore, keep in mind that you may consider  
22 the evidence which you recall and which relates not only  
23 to a given event or conversation or transaction but to  
24 the surrounding circumstances as well in your consideration  
25 of this issue of intent or guilty knowledge.

15



1 mdrf 11

2           Parenthetically, let me say here that it is not  
3 necessary for the prosecution to prove knowledge of  
4 the accused that a particular act is a violation of a  
5 specific statute or law. Unless and until outweighed  
6 by evidence to the contrary the presumption is that  
7 every person knows what the law forbids and knows what the  
8 law requires to be done.

9           I turn to the charges in this indictment. As  
10 you know, I read them to you at the start. They are very  
11 brief, they can be summarized as follows:

12           Count 1 accuses Norman Burton, and a person  
13 unknown, known as John Doe, or Ron, with unlawfully,  
14 intentionally and knowingly distributing and possessing  
15 with intent to distribute a Schedule 2 narcotic drug,  
16 specifically, 110.5 grams of cocaine, here in New York  
17 City on May 29th of this year.

18           Count 2, in identical language, accuses the same  
19 two individuals of a similar transaction, this one  
20 involving 106.97 grams of cocaine on July 15th of this  
21 year.

22           As you know, the defendant known as John Doe,  
23 or Ron, is not here on trial. Therefore, you have before  
24 you only to consider the question of the guilt or  
25 innocence of Mr. Norman Burton, who is sometimes

16

mdrf 12

referred to by the witnesses as Big Time, in connection with these two separate counts or charges.

These two counts in this indictment charge violations of a specific section of a comprehensive drug statute passed by the Congress of the United States in the year 1970, and which took effect in the spring of 1971.

The statute in one of the related provisions defines what is known as control substances. That statute says that among Schedule 2 control substances, as alleged in these two counts, is cocaine or cocaine hydrochloride.

The specific statute which Mr. Burton is accused of violating on May 29th and July 15th of this year reads in substantial part as follows:

"It is unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance..." such as cocaine.

In other words, it is a federal crime to knowingly or intentionally distribute or possess with intent to distribute cocaine.

I am going to summarize for you the essential elements which you must find proved beyond a reasonable doubt in order to support a conviction or a determination of guilt on these two counts or either one of them. The



1 same essential elements, by the by, as I think you have  
2 already gathered from what I have said so far, pertain to  
3 each of these two counts.  
4

5 First, you must be satisfied that on the dates  
6 in question -- that is to say, May 20th and July 15th --  
7 Mr. Norman Burton either distributed or possessed with  
8 intent to distribute cocaine substantially in the amount or  
9 weight alleged.

10 Second, you must be satisfied that if he did so  
11 he did so unlawfully, wilfully, and knowingly.

12 Third, you must be satisfied that the substance,  
13 which is said to have been distributed or possessed with intent  
14 to distribute -- and you will remember the two packages here  
15 in evidence are Government's Exhibits 7 and 8 -- were in fact  
16 a controlled substance, specifically in this case, of course,  
17 cocaine hydrochloride.

18 Fourth, you must be satisfied beyond a reasonable  
19 doubt that the events occurred here in this judicial district,  
20 and I instruct you that 300 West 55th Street in the Borough of  
21 Manhattan is certainly in this judicial district. There is no  
22 doubt of that.  
23  
24  
25

Now, I want to say a few further words and instruct you a little bit further about the meaning of some of these essential elements. I have already stated that the statute uses the words, and the two counts use the words, distribute or possess with intent to distribute a drug.

Now, what do these words or this phrase or phrases mean?

I want to start out by saying that it is sufficient if you find beyond a reasonable doubt that Burton either distributed or possessed with intent to distribute cocaine. In other words, you don't have to find both. It is sufficient if you find one or the other of these alternatives.

I instruct you that the word "distribute" means actual constructive or attempted transfer of the drug.

The word "possessed" in the meaning of this statute, by the way, has its everyday common sense meaning.

Here the Government, as you know, charges actual possession. They rely on the testimony of Dorothy Johnson who testified in substance, as I recall it at least, that on each of the two days of the buys which she described, Norman Burton actually had in his hands the cocaine in question. Therefore, the Government contends that they have proved actual and not constructive possession. Because of that,



I won't bother to inform you what is meant by constructive possession. They charge actual possession by Mr. Burton in his apartment on the two days in question.

I have already instructed you in substantial measure as to what the law means by unlawfully, wilfully and knowingly. You must be satisfied, in other words, in this respect and under this element that the defendant did what he was doing with full awareness of what he was doing and not by some mistake or under some coercion or pressure.

Very simply, you have got to be satisfied here that he knew full well what he was doing, that he intended to do what he was doing, and that was it. In other words, you have got to be satisfied that he knew that he was dealing in cocaine, that he intended to deal in cocaine, and that he expected to sell cocaine and get a price for it.

I might say to you, going back to the third essential element -- that is to say, proof to your satisfaction beyond a reasonable doubt that the substances in question were in fact cocaine -- first of all you don't have to find that it is a hundred per cent pure, as long as it is any percentile of cocaine contained in that powder that would be sufficient.

1 mde 3  
2 Second of all, I instruct you as a matter of law  
3 that cocaine is a schedule II substance as Congress defined  
4 that substance in this statute claimed to be violated by  
5 Mr. Burton.

6 I really don't think there is any substantial  
7 issue about this matter. However, I point out to you that  
8 it is essential that you find that it was cocaine in fact  
9 beyond a reasonable doubt. You know that we had two  
10 Government chemists, two separate chemists, who testified here  
11 because each one of them examined a single package. You  
12 will remember their testimony. Mr. Marrero and the other  
13 gentleman whose name I don't recall.

14 I am not going to recite all the evidence in  
15 this case, I am not going to recite all the claims of the  
16 defendant and the prosecution. I think the lawyers made it  
17 very clear that the Government's case is based in substan-  
18 tial part on the testimony of Detective Johnson, as cor-  
19 roborated, as the Government contends at least, by the  
20 surveilling agents, and to an extent by the taperecordings  
21 of conversations with Mr. Burton that Detective Johnson  
22 had, and perhaps by other evidence in the case.

23 On the other side of the coin, as you know, it is  
24 a major contention of Mr. Burton that Detective Johnson  
25 is a liar, that she is a woman scorned, that she had an



1 mbe 4

2 affair with him, as I understood him at least, beginning  
3 in 1972, and that she is testifying in this case falsely  
4 in order to get even with him because apparently the con-  
5 tention is that he scorned her finally and took up with  
6 others.

7 Mr. Burton also contends that he was not in on  
8 the day of May 29, and that he did not receive the telephone  
9 call, and that he was out in Garden City delivering a  
10 check. As you know, on the other side of the coin the  
11 Government points to the taperecordings of that day, they  
12 point to the testimony of rebuttal witnesses.

13 Now, I think because of all this you are perfectly  
14 aware and you need no elaboration from me to understand  
15 that credibility is very important in this case. Before I  
16 close, I want to instruct you about your role as the sole  
17 deciders of credibility and the weight which the testimony  
18 of a given witness deserves.

19 You are entitled to, and indeed you should, con-  
20 sider such criteria as the demeanor of the witness who sat  
21 here, any interest that he or she might have in the outcome  
22 of this case -- that is to say, your verdict -- any motive or  
23 reason that he or she might have to lie or obfuscate or  
24 conceal the truth, the strength or weakness of recollection  
25 of a given witness of past events, the testimony of a

1 witness compared with the testimony of another witness or  
2 witnesses on the same subject or perhaps as compared with  
3 documents in evidence. Those and similar criteria that  
4 you would use in sizing up a person with whom you were deal-  
5 ing in an important matter in life obviously are the cri-  
6 teria you should use in deciding credibility.  
7

8 Now, under our system, generally speaking, you  
9 are entitled to accept or reject wholly or in part, the  
10 testimony of any witness who appeared here, depending upon  
11 how you assess his or her credibility.

12 A couple of other things about witnesses. You  
13 will remember, of course, that the first witness for the  
14 United States was Mrs. Ladd. Now, in plain, blunt language,  
15 Mrs. Ladd is what people call an informer, or an informant.  
16 There is not doubt about it. She told us about that, and  
17 she told us what she had been doing in life, and she spent  
18 an awful lot of time, according to her, in jails under  
19 various convictions, some 17 in number at least.

20 She is even facing charges now, even while she is  
21 in protective custody as an informant and cooperating with  
22 the Government Task Force.

23 The Government takes its witnesses where it finds  
24 them. That is certainly true and obvious. It isn't fre-  
25 quent that people of impeccable reputation are witnesses ,



1 mbe 6

2 to or participants in criminal endeavors.

3 On the otherside of the coin, however, I think  
4 it is perfectly fair that you consider her testimony with  
5 considerable scrupulous care. She has admitted to all kinds  
6 of unpleasant and criminal activities. She has admitted to  
7 being paid as a cooperating witness for the Government.  
8 Therefore, I ask you to consider her testimony with scru-  
9 pulous care.

10 Another point you ought to keep in mind, which  
11 again is obvious, I am sure to all of you, but perhaps it  
12 is worth pointing out, and that is to say this. Just  
13 because a person comes here as a Government agent or a police  
14 officer doesn't make his or her testimony as a matter of law  
15 more believable than the testimony of another witness. That  
16 is just one way of saying that you ought to consider the  
17 testimony and the credibility of a witness who comes in  
18 here and says he or she is a police officer just as you  
19 would consider that witness' answers or her credibility  
20 if she were a private individual.

21 I am going to ask you to keep in mind that it is  
22 not your function or purpose to consider possible punish-  
23 ment in the event that you were to determine the defendant  
24 guilty on one or both of these charges. That for better  
25 or worse under the law is left up to the Court. Therefore,

24

1 mde 7

2 I ask you not even to think of or discuss possible punish-  
3 ment in the event you were to find Mr. Burton guilty of one  
4 or both of these charges.

5 Under our system we require an unanimous verdict  
6 from you on each count. We will ask you to report that  
7 through your foreman, Mrs. Gould, by way of a general ver-  
8 dict on each count. All I mean by that is that when you  
9 decide the case you will come out and report through Mrs.  
10 Gould whether you find the defendant Burton guilty or not  
11 guilty of count one, and you will state the same determina-  
12 tion with respect to count two.

13 You must be unanimous either way you come out  
14 on the two counts in question.

15 As to exhibits which were received in evidence,  
16 rest assured that I will see to it that the lawyers send  
17 those in to you as soon as possible so you will have all  
18 the exhibits there in case you want to see any one or more  
19 of them.

20 You have been very patient. Things went a little  
21 longer than we anticipated and hoped this morning. I am  
22 going to reverse the usual procedure and ask you to sit  
23 there quietly, and I am going to invite the lawyers to  
24 come with me out of the room so that they can comment upon  
25 my instructions. Maybe I misstated something unwittingly

25





or left something out.

We will be right back with you to submit the case.

By the bye, I should tell you, in view of the hour, we are going to arrange to order luncheon for you at the expense of the United States. Your orders will be taken very shortly. So don't despair on luncheon.

(In the robing room.)

THE COURT: Mr. Beller?

MR. BELLER: I have no comment. I thought it was a very fair charge.

THE COURT: Mr. Bobick.

MR. BOBICK: On the record, I have to take exception to the Court's charge on the grounds that the charge to the jury was prejudicial against the defendant, that the Court's summation of the evidence was improper and incorrect, that the Court --

THE COURT: Wait a minute. Which way was it incorrect?

MR. BOBICK: Against the defendant. You mean on what specific things said?

THE COURT: Yes.

MR. BOBICK: Specifically, when you dealt with the situation on Ladd, Marion Ladd, you testified to the





